



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159525

PRELIMINARY RECITALS

Pursuant to a petition filed August 01, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on September 05, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency erred in denying Petitioner's application for replacement FS benefits when the agency agrees that Petitioner meets the statutory requirements for replacement FS benefits, but disagrees on the amount of food lost.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner suffered a power outage from June 30, 2014 to July 1, 2014. Petitioner lost \$150 worth of food during the power outage.

3. On July 1, 2014 Petitioner applied for replacement FS benefits. Petitioner submitted verification of the power outage with her application.
4. On July 30, 2014 the agency denied Petitioner's request for replacement FS benefits. The agency stated that Petitioner did not meet the requirements for replacement FS benefits.
5. On August 1, 2014 the Division of Hearings and Appeal received Petitioner's request for fair hearing.
6. In preparation for the fair hearing, the agency determined that Petitioner met the statutory requirements for replacement FS benefits. The agency offered Petitioner \$50 in replacement FS benefits, but Petitioner declined because she lost more than \$50 worth of food during the power outage.

DISCUSSION

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Finally, the agency must determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. 7 C.F.R. § 274.6(a)(2). The statute directs the agency that:

Prior to replacing destroyed food that was purchased with Program benefits, the State agency shall determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. This shall be verified through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit

7 C.F.R. § 274.6(a)(6)(ii).

In this case the agency concedes that Petitioner meets the requirements for replacement FS benefits. The only issue left for me to decide is the amount of replacement FS benefits. The agency is willing to issue \$50 worth of replacement FS benefits. The agency argues that Petitioner's June FS usage only shows purchases for less than \$20. Based upon this usage the agency does not believe that Petitioner is buying large quantities of meat and storing the meat in her freezer.

Petitioner requested \$350 in replacement FS benefits on her application, but at the hearing testified she should get at least \$150 in replacement benefits. Petitioner testified that she lost ground beef, chicken, brisket, steak, shrimp, and salmon. The agency questioned the amount Petitioner requested in replacement FS benefits. Although the agency is correct to question the amount of Petitioner's request, the agency did not go to Petitioner's home to inspect the amount of food lost. Ultimately Petitioner agreed that \$150 would be a fair amount of replacement FS benefits. It is very likely that a person could lose \$150 worth of food in a multi-day power outage. Based upon the record in this case, I can only conclude Petitioner lost \$150 worth of food during her power outage.

CONCLUSIONS OF LAW

The agency incorrectly denied Petitioner's application for replacement FS benefits. Petitioner is entitled to \$150 in replacement FS benefits.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to issue Petitioner \$150 in replacement FS benefits. The agency has 10 days from the date of this decision to issue these replacement benefits.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of September, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 23, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability